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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,)	CIVIL NO.
)	
Plaintiff,)	
)	
v.)	
)	COMPLAINT
APACHE NITROGEN PRODUCTS, INC.,)	
)	
Defendant.)	
)	

The United States of America, by and through the undersigned attorneys, by authority of
the Attorney General of the United States, and acting at the request of the Administrator of the

United States Environmental Protection Agency ("EPA"), alleges as follows:

NATURE OF ACTION

1. This is a civil action against Defendant Apache Nitrogen Products, Inc. ("Apache") for civil penalties and injunctive relief pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), based on Apache's failure to comply with the provisions of 40 C.F.R. § 60.11(d).

JURISDICTION, AUTHORITY, AND VENUE

2. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331, 1345, and 1355, and under Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b).

3. The United States Department of Justice has authority to bring this civil enforcement action under 28 U.S.C. §§ 516 and 519, and under Section 305 of the Clean Air Act, 42 U.S.C. § 7605.

4. The alleged violations of the Clean Air Act occurred at Apache's nitrogen products manufacturing plant near St. David in Cochise County, Arizona. Venue for this civil action lies in the District of Arizona - Tucson pursuant to 28 U.S.C. §§ 1391(b) and 1395, and under Section 113(b) of the Clean Air Act.

THE DEFENDANT

5. Defendant Apache is a New Jersey corporation with its principal place of business in St. David, Arizona. Apache currently operates a nitrogen products manufacturing plant near St. David, in Cochise County, Arizona.

6. Originally operating as Apache Powder Company, the site was constructed in the

1920's and was used to produce nitroglycerine dynamite. Apache ceased production of dynamite in 1990 and changed its name to Apache Nitrogen Products, Inc.

7. Apache currently uses the facility for the production of nitric acid, prilled ammonium nitrate, liquid ammonium nitrate, and the fertilizers DI-AN, UAN-32, and AN-20.

8. Apache utilizes an ammonia oxidation process ("AOP") to produce nitric acid. At the St. David, Arizona site, Apache operates two separate nitric acid production plants, AOP-3 and AOP-4. These plants emit nitrogen oxide gases.

REGULATORY BACKGROUND

The Clean Air Act and the NSPS Regulations

9. The primary purpose of the Clean Air Act, 42 U.S.C. §§ 7401-7671, is to protect and enhance the quality of the nation's air resources so as to promote the public health and welfare and the productive capacity of its population. 42 U.S.C. § 7401(b)(1). To accomplish this, Section 109 of the Clean Air Act, 42 U.S.C. § 7409, requires the Administrator of EPA (the "Administrator") to promulgate national ambient air quality standards ("NAAQS") for certain air pollutants to protect public health and welfare.

10. Within the framework set forth for maintaining NAAQS, the Clean Air Act sets forth guidelines within which the Administrator is to promulgate regulations regarding standards of performance for new stationary sources. 42 U.S.C. § 7411; CAA § 111. Section 111 requires that the Administrator create a list of categories of stationary sources and promulgate specific air quality standards for each category. 42 U.S.C. § 7411(b); 42 U.S.C. § 7411(f).

11. The New Source Performance Standards ("NSPS") promulgated by the Administrator pursuant to Section 111 of the Clean Air Act to regulate the emissions of newly

constructed sources of air pollution are set forth in Title 40, Part 60 of the Code of Federal Regulations. See 40 C.F.R. part 60.

12. Subpart G of the NSPS regulations governs nitric acid plants for which construction or modification has been commenced after August 17, 1971. See 40 C.F.R. §§ 60.70-60.74. A “nitric acid production unit” is defined as “any facility producing weak nitric acid by either the pressure or atmospheric pressure process.” 40 C.F.R. § 60.71(a).

13. All NSPS sources, including those subject to Subpart G of 40 C.F.R. Part 60, are also subject to the NSPS general requirements of Subpart A-General Provisions, 40 CFR §§ 60.1-60.19.

14. Subpart A-General Provisions of the NSPS, 40 C.F.R. § 60.11(d), states that “[a]t all times, including periods of startup, shutdown, and malfunction, owners and operators shall . . . maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.”

15. Apache’s AOP-3 and AOP-4 production plants are subject to the requirements of 40 C.F.R Part 60 Subparts A and G.

16. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the United States to commence a civil action for a permanent or temporary injunction, and to assess and recover a civil penalty of not more than \$25,000 per day for each violation whenever a person has violated any requirement or prohibition of an applicable implementation plan. 42 U.S.C. § 7413(b)(1). This amount was increased to \$27,500 per day for violations occurring on and after January 31, 1997. See 40 C.F.R. § 19.

CLAIM FOR RELIEF

17. Paragraphs 1 through 16 are realleged and incorporated herein by reference.

18. Apache shutdown and started up its AOP-3 and AOP-4 production plants more than 40 times between 1999 and 2002.

19. For each of the events as referenced in Paragraph 18 and Attachment A, Apache failed to operate its facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions in violation of Section 113 of the Clean Air Act § 7413(b) and 40 C.F.R. § 60.11(d).

20. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), this Court may issue an injunction or assess a civil penalty of up to \$27,500 per day for each day of violation, or both.


WHEREFORE, Plaintiff, the United States of America, respectfully prays that this Court:

- (a) Enter judgment against defendant Apache Nitrogen Products Corporation for violation of Section 111 of the Clean Air Act and 40 C.F.R. § 60.11(d);
- (b) Assess civil penalties of up to \$27,500 per day for each day of violation;
- (c) Issue an Order requiring Defendant Apache to comply with Section 111 of the Clean Air Act and 40 C.F.R. § 60.11(d); and
- (d) Award such other relief as the Court deems just and proper.

THE UNDERSIGNED PARTY signs this Complaint in the matter of United States v. Apache Nitrogen Products, Inc., relating to the Apache's nitrogen products manufacturing plant near St. David in Cochise County, Arizona.

Respectfully submitted,

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ATTACHMENT A
PERIODS OF VIOLATION OF 40 CFR 60.11(d)
APACHE NITROGEN

UNIT AOP-3

Date of Startup with NOx emissions in excess of 3 lbs/hr	Duration (hrs)
1/3/00	4
1/4/00	4
2/6/00	4
2/25/00	4
2/26/00	4
3/19/00	4
3/20/00	3
3/28/00	4
4/24/00	4
5/2/00	4
5/10/00	3
5/25/00	3
5/27/00	4
6/4/00	3
6/6/00	3
6/13/00	4
6/16/00	4
6/18/00	3
6/18/00 (later same day)	3
6/25/00	4
7/5/00	3

7/6/00	4
7/17/00	4
7/25/00	4
7/25/00 (later same day)	3
8/3/00	4
8/5/00	3
8/8/00	4
8/11/00	4
8/24/00	4
8/27/00	3
9/1/00	5
9/18/00	4
9/23/00	4
9/27/00	4
9/29/00	3
10/20/00	7
12/7/00	2
12/12/00	3
12/13/00	3
12/16/00	4
1/3/01	3
1/27/01	3
1/27/01 (later same day)	2
2/1/01	2
2/3/01	2
3/3/01	3
3/4/01	2
3/20/01	3

5/2/01	3
5/5/01	3
5/5/01 (later same day)	3
5/24/01	3
5/30/01	3
6/15/01	2
7/16/01	2
7/27/01	8
8/6/01	2
8/31/01	2
7/8/02	3
7/13/02	3

UNIT AOP-4

Date of Startup with NOx emissions in excess of 3 lbs/hr	Duration (hrs)
6/15/01	3
6/16/01	5
6/21/01	2
6/23/01	6
7/4/01	3
7/30/01	3
7/31/01	2
9/21/01	3
9/24/01	3
11/5/01	3
11/29/01	3
1/25/02	3

1/30/02	3
2/5/02	3
2/19/02	3
3/2/02	1
4/7/02	3
4/9/02	3
4/21/02	3
4/26/02	3
5/10/02	1
5/18/02	2